

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-044

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. D/B/A LIBERTY

2023 Default Service Solicitations

Order Approving Cost Recovery For Class III RECs

O R D E R N O. 27,025

June 24, 2024

This order approves the Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty) proposal, made in the context of last year's Default Service proceeding, in this instant docket, to recover \$864,640 in costs, through Default Service rates, related to certain 2020 vintage Class III Renewable Energy Certificates (RECs) acquired by the Company. The Commission approved the Company's recovery of these costs on an interim basis in Order No. 26,854 (June 30, 2023) in this proceeding; this Order makes this determination final.

I. BACKGROUND AND POSITIONS

On June 30, 2023, the Commission approved Liberty's request to recover the \$864,640 in costs on an interim basis through its Default Service rates, pending further adjudication of the issue by the Commission. *See* Order No. 26,854 at 4-5. Subsequently, on August 10, 2023, the Commission issued a supplemental Order of Notice scheduling a hearing on the Class III RECs matter for August 31, 2023. This Order of Notice provides further background regarding the issue. On August 22, 2023, the New Hampshire Department of Energy (DOE) filed a request to reschedule the August 31 hearing to December 2023, and proposed a series of procedural schedule features in advance of that hearing. The Office of the Consumer Advocate (OCA) and the Company provided their assent to the DOE's proposal. The Commission issued a

procedural order on August 23, 2023 approving this schedule. Following a series of requests to adjust the date of the December 2023 hearing, the Commission fixed the final date of the hearing as December 12, 2023 in a procedural order issued on October 30, 2023. The hearing regarding this issue was held on December 12, 2023, at which representatives of the Company, the DOE, and the OCA appeared. See Transcript of December 12, 2023 Public Hearing (Tr.), "Morning Session," available here: https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-044/TRANSCRIPTS-OFFICIAL%20EXHIBITS-CLERKS%20REPORT/23-044_2024-01-02_TRANSCRIPT_12-12-23-AM-SESSION.PDF

These orders and relevant filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-044.html>

The Company's position regarding the Class III RECs at issue is summarized in the written testimony of its personnel Doll and Green, Hearing Exhibit 10. Messrs. Doll and Green provided additional oral testimony at the December 12 hearing in support of the Liberty arguments in favor of recovery. In simplest terms, in July 2020, the Company acquired two tranches of Class III RECs at prices that were higher than the established Alternative Compliance Price (ACP), which was \$34.54 per Megawatt-hour (MWh) at that time. The Company did this in anticipation of the final passage of House Bill 1234-FN-A (HB 1234), which, under Part XXXI. of the Bill, would set the ACP payment level at an increased \$55/MWh level. Hearing Exhibit 10 at Bates Page 6. However, HB 1234 was vetoed by Governor Sununu, with the veto sustained in September 2020 by the Legislature, meaning that the expected savings to Liberty

customers from these purchases of the two tranches of Class III RECs of approximately \$300,000 did not materialize. *Id.*

The Company further noted that on April 20, 2021, in Order No. 26,472, the Commission lowered the Class III REC requirement for the 2020-2021 compliance year from 8 percent to 2 percent. Liberty stated that the Company used as many of the 2020 Class III RECs as legally permissible, under RSA 362-F:7, for the compliance years ending June 2021, June 2022, and June 2023. After exhausting its ability to use the 2020 Class III RECs, Liberty was left with 25,033 stranded RECs. Hearing Exhibit 10 at Bates Page 7-8.

As a compromise, the Company proposes that recovery of the price of the stranded RECs, up to, but not beyond, the then-current ACP price of \$34.54 (i.e., \$864,640) would be just and reasonable, as the actions of the responsible Company executives in making the REC purchases in anticipation of imminent legislative changes through HB 1234 were prudent, given the information available to them at the time. The Company also argues that the Commission's 2021 reduction of the Class III REC requirement from 8 percent to 2 percent by Order No. 26,472 was not reasonably foreseeable, as a factor driving the stranding of RECs acquired nearly one year prior in 2020. Hearing Exhibit 10, *passim*; Tr. at 13-58.

The DOE, through the written testimony of its personnel Stephen Eckberg, Hearing Exhibit 8, as augmented by Mr. Eckberg's oral testimony at the December 12 hearing, argues that the Company's acquisition of the Class III RECs at a price above then then-current ACP of \$34.54 was *ipso facto* imprudent, no matter the pendency of the HB 1234 legislation. The DOE asserts that it was unreasonable and imprudent for Liberty to have consummated the Class III REC transactions at issue in July 2020, based on the information available to the Company at that time, by knowingly entering

into contracts at a cost per REC well above the then-current ACP rate, and therefore recommends full Commission disallowance of the \$864,640 in costs, and related carrying charges. Tr. at 11-12; Tr. at 60-137. Mr. Eckberg stressed in his oral testimony that the variability of the REC compliance levels is a factor of which the Utilities in this State are aware of, and should plan for accordingly. Tr. at 135-137.

The OCA, in a statement made at the December 12 hearing, told the Commission that the DOE, through Mr. Eckberg, "has presented to you what I [the Consumer Advocate] consider to be a colorable set of facts and arguments in favor of his [Eckberg's] position. And I would simply urge the Commission to take his position very seriously." Tr. at 140.

II. COMMISSION ANALYSIS

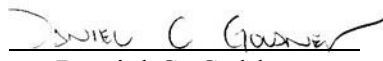
In assessing the Liberty request to finalize the recovery of \$864,640 in 2020 vintage Class III REC costs, which has already been accomplished on an interim basis through the Default Service rates of the Company, the Commission must reflect upon the prudence of the decisions made by the Company in July 2020, given the information available to its personnel at the time. REC ACP levels and Renewable Portfolio Standard (RPS) attainment levels have frequently shifted in response to the Legislature's, Commission's, and now, DOE's actions. Class III RPS attainment levels dropped from 8 percent in 2019, to 2 percent in 2020 as discussed, 1 percent in 2021, ½ percent in 2022 and 2023, and can potentially increase to 8 percent for 2024 and beyond. See: <https://www.energy.nh.gov/renewable-energy/renewable-portfolio-standard> (note Table with attainment levels; see also DOE Order Setting Class III Obligation, March 5, 2024, available here: <https://www.energy.nh.gov/sites/g/files/ehbemt551/files/inline-documents/sonh/order-setting-2023-class-iii-obligation.pdf>).

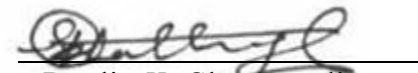
In navigating the shifting sands of the Class III REC compliance environment in the summer of 2020, with the potential of the (to-be-vetoed) HB 1234 increasing ACP rates to \$55/MWh, and concerns about Liberty meeting the 8 percent Class III attainment level prevailing at that time, the Company acted on the razor's edge of prudence in acquiring the RECs in question. We will therefore finalize the compromise recommended by the Company, wherein Liberty would only recover the cost of these RECs to the then-operative ACP cost level of \$34.54 through its Default Service rates. We do encourage Liberty in future, however, to respond to economic conditions relating to RECs as actually in place through effective legislation and rules, and to remain cognizant of the then-effective ACP level when making REC purchases. We also encourage the DOE, within the Default Service proceedings then-pending, to give the Commission information regarding likely directional outcomes for REC attainment and ACP level-setting, whenever possible.

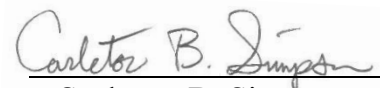
Based upon the foregoing, it is hereby

ORDERED, that the Company's interim recovery of \$864,640 in 2020 vintage Class III REC Costs provided for in Order No. 26,854 (June 30, 2023) through Default Service rates is made FINAL by the terms of this Order.

By order of the Public Utilities Commission of New Hampshire this twenty-fourth day of June, 2024.


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-044

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